



**CONFLICT OF
INTEREST COMMISSIONER**

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

2005/2006

The Honourable Bill Barisoff, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
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Mr. Speaker:

I have the honour to present the Annual Report of the Office of the Conflict of Interest
Commissioner for 2005/2006.

This report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*,
Chapter 287 of the Revised Statutes of British Columbia.

Yours truly,

H A. D. Oliver
Commissioner

TABLE OF CONTENTS

Review of 2005/2006.....	4
Integrity	5
Honesty	5
Accountability	5
Office of the Conflict of Interest Commissioner	5
Opinions, Investigations and Inquiries	6
Formal Opinion.....	7
Prohibition and Penalties	7
Conflict of Interest	7
Improper Use of Information	7
Improper Use of Influence	7
Improper Use of Gifts or Benefits	7
Independence of the Office of the Conflict of Interest Commissioner	8
Spirit of the Act	8
Deliberate or Unintended Infractions - The Commonsense Approach	8
Disclosure.....	9
Commissioner's Responsibility.....	9
Ethics Bulletins.....	10
Budget	10
Office Administration.....	10
Looking Forward	11
Appendix A: Members' Conflict of Interest Act	12

Review of 2005/2006

This is the thirteenth report of the Conflict of Interest Commissioner and covers the 2005/2006 fiscal year. I am pleased to report that there have been no significant contraventions or breaches of the *Act* by Members of the Legislative Assembly during this period.

During my nine years as Conflict of Interest Commissioner I have tried to put more emphasis on stopping problems from happening than simply cleaning up the mess afterwards. This function takes up most of my working hours and involves frequent informal consultation, discussion and advice. This very informal consultation process is made use of by all members and appears to be a very effective means of attaining the objective for which the Conflict of Interest Commissioner's Office was established.

Much of 2005 and 2006 involved disclosure and material changes in members' interests. In addition, in connection with the provincial election, a concentrated effort was made to brief the newly elected Members of the Legislative Assembly as well as to consult with their staff and review with them the demands and limitations placed upon MLAs by the *Members' Conflict of Interest Act*.

As in previous years, I addressed the new Legislative Interns on issues of political integrity and the functions of my office. I have also by invitation addressed student groups at universities and high schools and groups of interested citizens on questions of political ethics and the avoidance of corruption.

My office also received many inquiries from other jurisdictions around Canada and the world who called with inquiries about our legislation and occasional requests for suggestions about their own.

In September 2006, I responded to an invitation (together with the Hon. Coulter Osborne, QC, Integrity Commissioner for Ontario) to testify before the Committee of the Senate of Canada studying the new Federal Accountability Bill. I testified before the Committee en route to the Canadian Conflict of Interest Network's Annual meeting in Nunavut.

The customary ebb and flow of complaints occurred during the year, any one of which can be infinitely more demanding and complex than a simple recital of the number of cases handled would imply. I have endeavoured, as in previous years, to offer members collectively and individually careful, effective guidance and advice on conflict-of-interest matters, well before a simple uncertainty develops into a major problem. It is here, in the earliest preliminary stages, before decisions by members are made, that the focus of the work of this office is to be found.

During the past year approximately 44 requests for inquiries were sent to our office. This does not include the numerous informal inquiries received by telephone, or in face-to-face discussions. In most of these cases, the preliminary research provided me with enough information to satisfy me that it was not necessary to proceed further and to close the file. In others, more detailed research was required. In all cases in which I decide

that the evidence does not warrant a report to the Legislature or to Cabinet, I try to give the complainant a clear explanation of the circumstances which led me to that decision.

Throughout this year, I have sought to adopt an approach which is tactical and balanced: tactical in the sense that it is proactive and focused on the key issues; balanced in that cases are handled in a manner appropriate to the weight of the issues at stake.

By far the greatest portion of the Commissioner's time is taken up with informal, confidential meetings with Members of the Legislative Assembly and of Cabinet to discuss the members' concerns or potential issues under the Statute, or to provide assistance to members in identifying potential future problems not readily observable at first glance, with a view to avoiding such problems. It is in the exercise of this informal and confidential consultative function that the most valuable aspect of the Commissioner's work may be found. We will continue this process with an eye to fairness, impartiality, thoroughness and appropriate dispatch.

As I have said in previous reports, we do not monitor the behaviour and actions of Members of the Legislative Assembly. It remains the member's responsibility to act with integrity and to apply a simple code of ethical conduct to their actions. I have attempted to underscore with all MLAs that the spirit of the legislation should compel them to act with the following principles in mind:

Integrity

Members should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Honesty

Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Accountability

Members are accountable for their decisions and actions to the public and in particular, to their constituents.

Office of the Conflict of Interest Commissioner

The Office of the Conflict of Interest Commissioner exists as a result of and operates under the *Members' Conflict of Interest Act* RS Chapter 287 of the Revised Statutes of British Columbia, 2004. The Conflict of Interest Commissioner is an independent Officer of the Legislative Assembly. The present Commissioner was initially appointed in 1997 for a five-year term, and for a further five-year term in 2002.

The Commissioner reports to the Legislative Assembly through the Speaker of the House by means of annual reports, investigative reports or special reports on matters relating to his jurisdiction under the *Members' Conflict of Interest Act*.

The Commissioner is responsible for assisting Members of the Legislative Assembly and Members of Cabinet in reconciling their private interests and public duties so as to act with integrity and impartiality and in such a manner as to bear intense scrutiny at all times.

The Commissioner receives confidential financial disclosure statements from each member within 60 days of their election and after that at least annually, relating to the financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them. Each filing is followed by a meeting of the member with the Commissioner to discuss the member's confidential disclosure statement and the member's obligations under the *Members' Conflict of Interest Act* and the Commissioner may recommend the manner by which the member will comply with those obligations. After filing a disclosure statement, the member must continue to disclose any material change in financial circumstances by filing a statement of material change. Following the meeting between the member and the Commissioner, the Commissioner prepares a public disclosure statement which is filed with the Clerk of the Legislative Assembly and is available for public inspection.

Opinions, Investigations and Inquiries

Inevitably, it is complaints and investigations that attract attention.

Many complaints from members of the public fall outside my area of jurisdiction. In some cases it is because the complainant is unfamiliar with the *Members' Conflict of Interest Act* and believes the Commissioner to be vested with much broader powers than is the case. In others it is because the complaint concerns a member's handling of a constituent's case. Such matters involve questions of policy and of political judgement by the member concerned and are quite properly outside my remit. I have neither the jurisdiction nor the wish to weigh the quality or wisdom of the advice given by a member to a constituent: a dissatisfied constituent must seek his remedy at the ballot box.

The Commissioner may provide formal opinions to Members about their individual obligations and conduct or about the conduct of other Members of the Legislative Assembly or to members of the public about the conduct of Members under the *Act*. The Commissioner may also provide opinions to Cabinet or to the Legislature as a whole.

The Commissioner may pursue investigations and formal inquiries into the conduct of individual members and may report to the Legislative Assembly, through the Speaker, the results of such inquiries into alleged breaches of the *Act*. The Commissioner may recommend penalties arising out of any findings of misconduct under the *Act*, varying from a reprimand to a fine to suspension and to expulsion from the Legislative Assembly. The Assembly may accept or reject the Commissioner's report and recommendations but may not vary the penalty.

Formal Opinion

The Commissioner tabled one formal opinion in the Legislature in 2006:

IN THE MATTER OF AN APPLICATION BY
SHANE SIMPSON, MLA FOR VANCOUVER-HASTINGS,
OPPOSITION CRITIC FOR ENVIRONMENT,
WITH RESPECT TO ALLEGED CONTRAVENTIONS
OF PROVISIONS OF THE MEMBERS' CONFLICT OF INTEREST ACT
BY THE HONOURABLE PAT BELL, MLA FOR PRINCE GEORGE
NORTH, MINISTER OF AGRICULTURE AND LANDS

This opinion involved the recreational use of snowmobiles in a Provincial Park. The Commissioner found that no breach of the *Members' Conflict of Interest Act* had occurred. A copy of this opinion may be obtained from the Office of the Conflict of Interest Commissioner's website at <http://www.gov.bc.ca/oci> or by calling the Conflict of Interest Commissioner's Office at 250-356-0750.

Prohibition and Penalties

The following prohibitions and their related penalties are covered more thoroughly in the appended *Member's Conflict of Interest Act*.

Conflict of Interest

The *Members' Conflict of Interest Act* prohibits members from performing official acts while in a conflict-of-interest or apparent conflict-of-interest situation.

Improper Use of Information

A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Improper Use of Influence

A member must not use his or her office to seek to influence a decision that is to be made by another person, in order to further the member's private interest.

Improper Use of Gifts or Benefits

A member must not accept a fee, gift or personal benefit, except compensation authorized by law, which is connected directly or indirectly with the performance of his or her duties of office.

Independence of the Office of the Conflict of Interest Commissioner

It is the complete independence granted to the Commissioner under the *Members' Conflict of Interest Act* and his or her ability to operate free from all outside direction, pressure or influence which has made possible the effective functioning of the Office of the Conflict of Interest Commissioner of British Columbia.

Spirit of the Act

The Commissioner is bound by the law as it is written in the *Members' Conflict of Interest Act*. Whenever it is possible, the Commissioner will apply the spirit of the *Act*. However, when and if it becomes necessary, the Commissioner applies the legislation to the letter.

The Commissioner must bear in mind that in British Columbia as in any democracy, some members may come from a background that is more politically astute than others. Some may be more familiar and experienced with the *Members' Conflict of Interest Act* than others. Generally, elected MLAs reflect the demographic of constituents they represent. Most importantly, many of them come to their elected positions with little or no prior political experience.

Deliberate or Unintended Infractions - The Commonsense Approach

A member's first duty is to serve the public interest. The public is entitled to and demands an exemplary standard of conduct from its elected officials. To achieve this, the *Act* demands that members may not use their position of influence for personal gain or to obtain or appear to obtain financial or other benefits for themselves, their families or their friends.

The spirit of the *Act* is a little more subtle than the wording of the *Act* alone. It allows the Commissioner to look beyond the exacting legal boundaries of the *Act* and assert that while a member may technically be outside of the restrictive boundaries established by the *Act*, technical infractions were not what those who drafted the legislation had in mind.

A minor technical infraction of the *Act*, inadvertent or unintentional, may occur. On occasion a member may not be fully aware of the limitations placed upon him and is dismayed and regretful on finding that a technical breach has occurred. For example, at Christmas last year a member found a gift basket including a box of chocolates on his desk in his constituency office. Without asking where it had come from (he assumed that it had come from the office staff), he opened it and placed some of the items in the main waiting area. In fact, the gift had come from someone on whose behalf he had done some constituency work. It was inappropriate for the constituent to give his MLA a gift, and

inappropriate for the member to accept it. By opening and sharing the basket, he had in effect accepted the gift. That interpretation would be the "letter of the law". Of course, the spirit of the *Act* would suggest that rather than finding this member in a conflict of interest and perhaps damaging his reputation and a promising career, it would be wiser and more effective to ensure that in future the member will be certain of the origin of any gift and will avoid any suspicion that he is deriving personal benefit from assisting constituents. Does this warrant an investigation? No. The spirit of the *Act* is better served by looking at the circumstances and making appropriate recommendations for the future.

Disclosure

The *Members' Conflict of Interest Act* states as follows:

Section 16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

While on the surface this appears to be a simple task, it is neither as simple nor as straightforward as the legislation might imply. There can be any number of questions about, and on-going revisions to, a members' disclosure statement even during the two-month period of time that is the window used to complete the task. However, I am pleased to report that all members have complied with this section of the *Act* in a timely fashion.

Commissioner's Responsibility

Ultimately, the Commissioner's responsibility is to the taxpayer, and this obligation is treated very seriously. The Commissioner must weigh the pros and cons of spending the taxpayer's dollars on formal inquiries which can sometimes be extremely costly. However, all complaints receive attention, even if some turn out to be mere storms in a teacup.

The Commissioner also has a responsibility to members. During my time as Commissioner I have provided advice on hundreds of occasions to MLAs regarding their obligations under the *Members' Conflict of Interest Act*. This includes, but is not limited to, travel, post-employment, gifts and benefits, donations, transparency, reporting outside activities, blind trust agreements, disclosure requirements and compliance measures. Many other issues are brought to my attention and many of these are discussed via informal telephone calls or in face-to-face meetings where an answer can be provided quickly and informally. Some are more detailed and require research and review of previous decisions by this office as well as of precedents from other jurisdictions. If the question asked by the member cannot be answered quickly and without reservation, I ask

that he or she put the issue and the full facts in writing to enable me to research it, and then offer the most appropriate response.

Ethics Bulletins

I have found that providing members with brief, one-page outlines of various areas of concern within the *Act* assists them in making decisions. As a result, the Conflict of Interest Commissioner's Office is developing a series of "Ethics Bulletins" for members that serve as reminders and updates. Currently we have, or are working on, Ethics Bulletins covering the following subjects:

- Post-Employment
- New Members
- Travel
- Gifts and Benefits
- Perception
- Disclosure
- Paid Expenses
- Letters of Reference and Support
- Use of Constituents' Names, Addresses, E-mail Addresses and Telephone Numbers for Party Political Purposes

Budget

The annual operating budget for the Office of the Conflict of Interest Commissioner is \$322,000. We continue to work within the limitations of this amount and hope to continue to do so for 2006 and 2007.

Office Administration

Once again, I wish to recognize the invaluable contributions to the work of this office by the three administrative staff members. Ms. Jill Robinson and Ms. Daphne Thompson continue to job-share (as they have done for many years) the position of Administrative Assistant. Ms. Betsi Curdie is our Research Officer and also manages our office budget and financial requirements.

I am told that the British Columbia Conflict of Interest Office is regarded as one of the most effective such organizations in Canada. I believe that a large part of our reputation is due to these three staff members, whose own genuine ethics and sound, substantial knowledge of conflict-of-interest issues permeates the work of the office.

I believe I speak for all my colleagues when I say that we look forward to working with and assisting the Members of the 38th Parliament in maintaining and enhancing that tradition.

Looking Forward

In 1992, almost 15 years ago, Roy Bonisteel wrote:

"Being a politician is likely the most unpopular profession in our country these days. Public opinion polls show them to be only a few notches above cat burglars in garnering our trust and respect... to serve our country in the political arena should be one of life's finer pursuits. Instead, for idealistic Canadians, it has become a one-way street to ridicule, disillusionment and shattered dreams."

I have not found that statement to be true in British Columbia fifteen years later. While we have some way to go, I believe that the development of conflict-of-interest legislation in provinces and territories across the country and the institution of ethics and integrity commissioners have led to heightened ethical standards on the part of members and a more sympathetic and realistic approach to integrity issues at the provincial level by the public.

During my years of office I have found Members of the Legislative Assembly to be honourable, honest and hard-working people. Members may have run for political office for a variety of motives, but I have not observed that the desire for personal financial gain is one of them. I have found them generally to be dedicated to the interests of their constituents and willing to work long hours for little reward, other than the appreciation of those whom they represent. If elected representatives in other jurisdictions engage in activities that bring politicians into disrepute, this should not unfairly and unjustifiably affect the reputation of the Members of our Legislature in British Columbia.

I would like to take this opportunity to express my thanks to the leaders of both parties in the Legislature for their unfailing support, and to all members for assisting me in carrying out my duties as Conflict of Interest Commissioner of British Columbia.

Appendix A: Members' Conflict of Interest Act